ALJ/HSY/eap **Mailed 7/25/2005** 

#### BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking for Purposes of Amending the Rules of Practice and Procedure to Reflect Internet Access to the Agenda and Agenda Item Documents. FILED
PUBLIC UTILITIES COMMISSION
JULY 21, 2005
SAN FRANCISCO OFFICE
RULEMAKING 05-07-015

## ORDER INSTITUTING RULEMAKING

## I. Summary

Chapter 1110 (Escutia) of the 1994 statutes, added Section 311.5 to the Public Utilities Code, which requires the Commission to make available to the public copies of the agenda and agenda item documents that are proposed to be considered by the Commission for action or decision at a Commission meeting. In 1995, the Commission adopted Rules 79 and 80 of its Rules of Practice and Procedure (Title 20, Division 1, Chapter 1 of the California Code of Regulations) to implement Pub. Util. Code § 311.5. The rules provide that the Commission will make the agenda and agenda item documents available for viewing at the Commission's office, and create a subscription service for requesting members of the public. Three years later, Chapter 886 (Calderon) of the 1998 statutes amended Pub. Util. Code § 311.5 to require the Commission to also publish the agenda and agenda item documents, as well as other Commission documents, on the Commission's Internet site.

The Commission has fully implemented Pub. Util. Code § 311.5 by making copies of the agenda and agenda item materials easily available to the public

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from the Commission's Internet site. Consequently, we propose to amend Rule 79 to eliminate hard copy service of the agenda to any person who has consented to e-mail service in a proceeding pursuant to Rule 2.3. Also, we propose to amend Rule 80 to eliminate the option of receiving hard copies of the agenda item materials. Finally, we propose to end our Daily Calendar subscription service.

## II. Requirements of Pub. Util. Code § 311.5

Pub. Util. Code § 311.5, as it was written in 1994, provided as follows:

Prior to commencement of any meeting at which commissioners vote on items on the public agenda the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting.

Thereafter, the Legislature amended Pub. Util. Code § 311.5 to require the Commission to publish at its Internet site the agenda and all agenda item documents, as well as all of the Commission's rules, general orders, decisions, resolutions and rulings. Pub. Util. Code § 311.5 in its entirety now provides:

(a) (1) Prior to commencement of any meeting at which commissioners vote on items on the public agenda the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting.

<sup>&</sup>lt;sup>1</sup> Stats. 1998, c. 886 (Calderon) required publication to begin no later than July 1, 1999.

Stats. 1999, c. 784 (Rainey and Speier), extended the deadline for publishing the documents on the Internet to July 1, 2001.

- (2) In addition, the commission shall publish the agenda, agenda item documents, and adopted decisions in a manner that makes copies of them easily available to the public, including, commencing publishing those documents on the Internet on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99. Publication of the agenda and agenda item documents shall occur on the Internet at the same time as the written agenda and agenda item documents are made available to the public.
- (b) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish and maintain all of its decisions and resolutions on the Internet. That publication shall occur within 10 days of the adoption of a decision or resolution by the commission.
- (c) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish at its Internet site the then-current version of its general orders and Rules of Practice and Procedure.
- (d) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish and maintain all of its rulings on the Internet. The commission shall maintain those rulings at its site until final disposition, including disposition of any judicial appeals, of the respective proceedings in which the rulings were issued.
- (e) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the commission shall publish and maintain a docket card that shall list, by title and date of filing or issuance, all documents filed and all decisions or rulings issued in those proceedings on the Internet. The commission shall maintain the

docket card until final disposition, including disposition of any judicial appeals, of the corresponding proceedings.

### III. Initial Statement of Reasons for Rule Amendment

Rule 79 and Rule 80 reflect Pub. Util. Code § 311.5, as it was written in 1994, by providing that the agenda and agenda item documents are available for viewing and photocopying at the Commission's offices. Rule 79 further reflects Sections 11125 and 11125.3 of the Government Code by providing, among other things, a subscription service for the agenda. Although Gov. Code § 11125 does not address agenda item documents, Rule 80 likewise permits members of the public to place a standing order with the Commission to receive, for a fee, all agenda item documents (or only those documents relating to a particular industry), and also waives such fee for any person whose participation in a proceeding without an award of fees or costs has been found to impose a significant financial hardship or who has such a showing pending before the Commission.

However, the 1998 amendments to Pub. Util. Code § 311.5 require the Commission to publish the agenda and all agenda item documents on the Commission's Internet site "in a manner that makes copies of them easily available to the public." The amendments also require the Commission to publish on its Internet site all decisions and resolutions (Section 311.5(b)), general orders and the Rules of Practice and Procedure (Section 311.5(c)), rulings (Section 311.5(d)), and a docket card listing, by title and date of filing or issuance, of all documents filed and all decisions or rulings issued in Commission proceedings (Section 311.5(e)). The Commission is now in full compliance with the statute, and the proposed amendments to Rule 79 and Rule 80 would reflect this relatively recent development of Internet access to these Commission documents.

First, the proposed amendment would eliminate the option of receiving mailed copies of agenda item documents from the Commission. Second, the proposed amendment would permit members of the public, other than parties who have consented to e-mail service in a proceeding pursuant to Rule 2.3 of our Rules of Practice and Procedure, to subscribe to receive hard copies of the agenda. Third, the proposed amendment would eliminate the waiver of subscription charges for the agenda item document subscription. Finally, we propose to eliminate subscription service for the Daily Calendar. These modifications will reduce paperwork and expense that is rendered unnecessary by the Internet publication of Commission documents. Internet publication of the documents enables more timely notice and access, and provides a better search capability, than is possible with hard copy service. In sum, the proposed modifications reduce administrative burden while preserving enhanced access to Commission documents.

## A. Agenda Item Documents

The Internet publication of agenda item documents, in conjunction with their physical availability for public viewing and photocopying at Commission offices, fully meets the requirement of Pub. Util. Code § 311.5(a)(1) that the Commission make the agenda item documents available to the public. In addition, Internet publication enhances public access to the documents. Currently, the Commission mails hard copies of all available agenda item documents to subscribers 10 days before Commission meetings, consistent with Gov. Code § 11125(a) which requires that time for mailing the agenda. While the Internet site is refreshed the day before Commission meetings to add new versions of agenda item documents, hard copies of the new versions are only available at the Commission meeting and are not mailed to agenda subscribers.

Thus, the Internet site provides a complete history of agenda items that is not available in hard copy by agenda subscription.

In addition, Internet access to agenda item documents reduces the burden of standing orders for such documents on both the Commission and on recipients. Under the standing order arrangement, the Commission produces and recipients pay for (unless the charge is waived) all agenda item documents concerning all Commission matters, regardless of the recipient's lack of interest in particular individual matters.<sup>2</sup> Internet publication and ease of downloading allows recipients to search for and select only those documents related to specific matters that are of interest to them.

## B. Agenda

The Internet publication of the agenda, along with its physical availability for viewing and copying at Commission offices, likewise satisfies the requirement of Pub. Util. Code § 311.5(a)(1) that the Commission make the agenda available to the public. However, Gov. Code § 11125(a) may impose a separate requirement that the Commission provide hard copy notice of Commission meetings and agendas to any requesting person. We therefore propose to continue to make hard copy notice of the agenda available to any requesting person unless, consistent with Rule 2.3 of our Rules of Practice and Procedure, that person has consented to e-mail service in a proceeding.

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<sup>&</sup>lt;sup>2</sup> Rule 80 does permit recipients to receive only those agenda item documents relating to a particular industry.

## C. Subscription Charge Waiver

The proposed elimination of the agenda subscription charge waiver<sup>3</sup> likewise reflects the easy availability of the agenda on the Commission's Internet site, the fact that persons otherwise eligible for the waiver may have consented to e-mail service pursuant to Rule 2.3, and the fact that persons otherwise eligible for the waiver may be entitled to recover the reasonable costs of obtaining hard copies of the materials through the intervenor compensation procedures. Specifically, if the Commission has found that a person's participation in a proceeding without an award of fees or costs would pose a significant financial hardship, the person's participation substantially contributed to the proceeding, and the costs for which recovery is sought are reasonable, the person is eligible for compensation for those costs. (Pub. Util. Code §§ 1801 et seq.)

### D. Daily Calendar

We give notice in this rulemaking that the Commission intends to cancel its subscription service for the Daily Calendar. Although we are not aware of any statutory requirement for hard copy service of the Daily Calendar, the Daily Calendar is easily available on the Commission's Internet site, consistent with the practices mandated by Pub. Util. Code §311.5.

# IV. Text of the Proposed Rule

The Commission proposes to amend existing Rules 79 and 80, Title 20, Division 1, of the California Code of Regulations as shown in Appendix A.

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<sup>&</sup>lt;sup>3</sup> Although the subscription fee waiver of Rule 80 technically applies only to agenda item document subscriptions, Commission practice has been to extend the subscription waiver to agenda subscriptions.

## V. Next Steps

The Chief Administrative Law Judge will submit a Notice of Proposed Rulemaking, the attached draft of the proposed rule amendment implementing Pub. Util. Code § 311.5, and all other required documents to the Office of Administrative Law (OAL) for publication in the California Regulatory Notice Register. This publication starts the 45-day notice and comment period, which is the first stage leading to the adoption and codification (in the California Code of Regulations) of the proposed amendment to Rules 79 and 80. For purposes of such publication, the Chief Administrative Law Judge is authorized to propose nonsubstantive changes to the draft whenever such nonsubstantive change will improve the clarity or consistency of the rule.

This order, including the text of the proposed rule amendment, and other documents submitted to the OAL will also be published on our web site. During the 45-day period following publication of the Notice of Proposed Rulemaking, written comments on the proposed rule amendment may be filed in this proceeding. We welcome written comments on the proposal.

# VI. Scoping

In this part of today's decision, we announce preliminary determinations and scoping, as required by Rule 6(c)(2). This proceeding is quasi-legislative in character. We see no need for a formal hearing. The general issue for the proceeding is implementation of certain provisions of Pub. Util. Code § 311.5 requiring the Commission to make available to the public copies of the agenda and agenda item documents that are proposed to be considered by the Commission for action or decision at a Commission meeting. We project final adoption and submission of the amended rule to the OAL within six months of the publication of the Notice of Proposed Rulemaking in the California

Regulatory Notice Register; however, in no event will the time to finally resolve this proceeding exceed 18 months from the effective date of today's decision.

## **Finding of Fact**

The proposed amendment to Rules 79 and 80, Rules of Practice and Procedure (Title 20, Division 1, Chapter 1 of the California Code of Regulations), will clarify, make specific, and otherwise implement those provisions of Pub. Util. Code § 311.5 requiring the Commission to make available to the public copies of the agenda and agenda item documents that are proposed to be considered by the Commission for action or decision at a Commission meeting.

#### **Conclusion of Law**

The proposed amendment to Rule 80 and other required documents should be sent to the OAL for publication in the California Regulatory Notice Register. In order to begin and complete the adoption process promptly, this order should be effective immediately.

#### **IT IS ORDERED** that:

- 1. This Order Instituting Rulemaking will be served initially on the attached service list. Any interested person may request inclusion on the service list for this rulemaking by writing to the Commission's Process Office by August 12, 2005; the updated service list will be published by ruling and at the Commission's Internet site (www.cpuc.ca.gov).
- 2. The Chief Administrative Law Judge shall send today's decision and all required forms to the Office of Administrative Law in accordance with applicable provisions of the Government Code. For purposes of publishing the appended proposed rule amendment in the California Regulatory Notice Register, the Chief Administrative Law Judge is authorized to make

nonsubstantive changes to the proposed rule amendment as may be required to prepare the rule for publication or to improve the overall clarity or consistency of the proposal.

3. The Chief Administrative Law Judge shall publish the Notice of Proposed Rulemaking, the text of the proposed rule, our initial statement of reasons for the proposed rule amendment to the Commission's Internet site.

4. Comments on the proposed rule amendment appended to this Order must be filed and served on or before September 19, 2005. The comment period, however, may be extended by a ruling of the assigned Administrative Law Judge.

This order is effective today.

Dated July 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

#### **APPENDIX A**

# Proposed Amendment to Article 19 of the Commission's Rules of Practice and Procedure

# **Article 19. Submission of Proceedings; Procedures for Comments and Replies** to Comments; Commission Meeting

## 79. (Rule 79) Meeting Agenda

- (a) At least ten days in advance of the Commission meeting, the Commission will issue an agenda for the meeting listing the items of business to be transacted or discussed. by publishing it on the Commission's Internet website. Requests for subscriptions to the agenda or for individual copies of the agenda should be directed to the Management Services Division. The agenda is also available for viewing and photocopying (for a fee) at the Process Office.
- (b) Members of the public, other than parties who have consented to e-mail service in a proceeding pursuant to Rule 2.3, may place a standing order with the Commission's Management Services Division to subscribe to receive hard copies of the agenda.
- (b) (c) A matter not appearing on the agenda of a meeting will not be decided unless:
  - (1) The Commission determines by majority vote that an unforeseen emergency situation (Rule 81) exists; or
  - (2) The Commission determines by a two-thirds majority (or, if less than two-thirds of the Commissioners are present, by a unanimous vote of those Commissioners present) that a need to take immediate action exists and that the need for this action came to the Commission's attention after the agenda for the meeting was issued.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 306(b) and 311.5, Public Utilities Code; Sections 11125(b) and 11125.3, Government Code.

## 80. (Rule 80) Agenda Item Documents

- (a) Before each Commission meeting, the Commission will make available to the public all draft orders, decisions, resolutions, alternates (other than alternates addressed in Rule 77.6), and written reports appearing on the agenda, except those documents relating to items the Commission considers during its closed session, by publishing them on the Commission's Internet website.
- (b) Members of the public may place a standing order with the Commission's Management Services Division to receive for a fee all agenda item documents or only those agenda item documents relating to a particular industry. Agenda item documents are also available for viewing and photocopying (for a fee) at the Commission's Central Files in San Francisco and at the Commission's Los Angeles and San Diego offices, and may be available in certain of the Commission's field offices. If agenda item documents are not ready when the agenda is issued, they will be available at no charge at 9 a.m. on the day and at the location of the Commission meeting.
- (c) If the Commission has found that a party's participation or intervention in a proceeding without an award of fees or costs would pose a significant financial hardship (see Public Utilities Code § 1803(b)), or if the party has filed and has pending a showing of significant financial hardship (see Public Utilities Code § 1804(a), (b)), the party is eligible to receive agenda item documents at no charge.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Sections 311.5, 1803 and 1804, Public Utilities Code; Section 11125.1, Government Code.

### (END OF APPENDIX A)

# APPENDIX B Service List - Rulemaking 04-01-005

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